

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE J.R. CLARKSON COMPANY, LLC,	:	
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Petitioner,	:	23-CV-10252-ER
	:	
v.	:	
	:	
NATIONAL UNION FIRE INSURANCE	:	
COMPANY OF PITTSBURGH, PA,	:	
	:	
Respondent.	:	

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**AFFIDAVIT OF AARON DEHAVEN IN SUPPORT OF NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA'S OPPOSITION TO  
THE J.R. CLARKSON COMPANY LLC'S ORDER TO SHOW CAUSE TO  
PRELIMINARILY AND PERMANENTLY ENJOIN ARBITRATION**

I, Aaron DeHaven, on oath and personal knowledge hereby state pursuant to 28 U.S.C § 1746 the following:

1. I am an Assistant Vice President of Loss Portfolio Transfers and Loss Sensitive Accounting in the Risk Management department within American International Group, Inc.'s ("AIG, Inc.") Property and Casualty insurance businesses. National Union Fire Insurance Company of Pittsburgh, Pa is an indirect, wholly owned subsidiary of AIG, Inc. ("National Union"). I submit this Affidavit in support of National Union's Opposition to The J.R. Clarkson Company LLC's Order to Show Cause to Preliminarily and Permanently Enjoin Arbitration submitted on November 21, 2023.

2. I have more than seventeen years of experience working with loss-sensitive insurance programs, like the program involving Moorco International Inc. ("Moorco"), whose successor I understand is The J.R. Clarkson Company LLC ("J.R. Clarkson"). I have extensive

experience working with loss-sensitive insurance programs that inceptioned in the 1980s and 1990s. A loss-sensitive insurance program denotes a commercial insurance program in which the insured's financial obligations are directly related to the insured's actual loss experience and amounts paid and reserved on claims submitted for coverage by the insured.

3. The facts set forth in this Affidavit are based on my personal knowledge, my more than seventeen years of experience with loss-sensitive insurance programs, and my review of the documents maintained in National Union's ordinary course of business.

#### **Overview of Program**

4. National Union issued insurance policies covering, among other things, commercial general liability, automobile liability, and workers' compensation liability, to Moorco from May 31, 1984 through May 31, 1990. In connection with the issuance of the insurance policies, National Union and Moorco entered into corresponding indemnity agreements under which Moorco is, among other things, obligated to reimburse and indemnify National Union for payments and reserves made on claims submitted for coverage pursuant to the terms the indemnity agreements (the "Moorco Program").

5. I understand that National Union sent J.R. Clarkson an arbitration demand in connection with the Indemnity Agreements for the policy periods for 1984-1985, 1987-1988, 1988-1989, and 1989-1990 for the Moorco Program. I understand that J.R. Clarkson has taken the position that there is no indemnity agreement for 1989-1990, and therefore, no basis to demand arbitration exists.

#### **The Moorco Program for the 1989-1990 Period Included an Indemnity Agreement Like in Previous Policy Periods**

6. Based on my review of the documents related to the Moorco Program, the history of the Moorco Program, and more than seventeen years of experience with loss-sensitive insurance

programs, I am confident that the Moorco Program for the 1989-1990 period was subject to an indemnity agreement.

7. Specifically, I reviewed the Universal Booking Sheet (“UBS”) for the 1989-1990 period for the Moorco Program, which is from the underwriting system in place at that time. The UBS demonstrates how the Moorco Program was structured and how coverage was issued for the 1989-1990 period. Attached as Exhibit 1 is a true and correct copy of excerpts from the UBS for the Moorco Program for the 1989-1990 period (the “Moorco 1989-1990 UBS”). The Moorco 1989-1990 UBS was created at the time that the Moorco Program for the 1989-1990 period was issued by employees responsible for conducting the underwriting for the program. Additionally, the Moorco 1989-1990 UBS has been maintained in the course of National Union’s regularly conducted business activity, and it is part of National’s Union’s regular practice to maintain underwriting records such as the Moorco 1989-1990 UBS.

8. The Moorco 1989-1990 UBS indicates that the Moorco Program for 1989-1990 was a “Note Program,” *see* Exhibit 1 at p. 4, which means that the Moorco Program for 1989-1990, like for the prior periods, was a loss sensitive, full coverage retention program. This means that Moorco agreed to indemnify and reimburse National Union for payments and reserves made on claims submitted for coverage. The existence of the loss sensitive structure is further evidenced by the listed excess premium charges, which are charges for risk transfer for losses that exceeded Moorco’s retention under the insurance program. *See, e.g., id.* at p. 6. Additionally, the Moorco 1989-1990 UBS reflects that Moorco’s retention under the 1989-1990 insurance program for general liability was \$250,000. *See, e.g., id.* at 18, 21. In sum, the Moorco 1989-1990 UBS demonstrates that the 1989-1990 Moorco insurance program was loss sensitive.

9. Based on my many years of experience for loss sensitive programs that inceptioned in the 1980s and 1990s, loss sensitive programs, such as the Moorco Program, were subject to indemnity agreements. The inclusion of an indemnity agreement was the way the loss sensitive programs were structured in the 1980s and 1990s. To the extent that J.R. Clarkson asserts that there was no indemnity agreement as part of the Moorco Program for the 1989-1990 period, that assertion is incorrect.

10. The Moorco Program for the 1989-1990 period was structured in substantially the same way as the 1988-1989 period as evidenced by the UBS Report for the 1988-1989 period. Compare Exhibit 1 at pp. 6-7 to Exhibit 2 at pp. 5-6. Attached as Exhibit 2 is a true and correct copy of excerpts from the UBS for the 1988-1989 period for the Moorco Program (the “Moorco 1988-1989 UBS”). The Moorco 1988-1989 UBS was created at the time that the 1988-1989 Moorco Program was issued by employees responsible for conducting the underwriting. Additionally, the 1988-1989 Moorco UBS has been maintained in the course of National Union’s regularly conducted business activity, and, as stated above, it is part of National Union’s regular practice to maintain underwriting records such as the 1988-1989 Moorco UBS.

11. For loss-sensitive programs that inceptioned in the 1980s and 1990s, in instances in which there were no substantive changes to the existing indemnity agreement in the subsequent policy year, it was not uncommon for National Union to choose not to issue a new indemnity agreement in the subsequent policy period. In such cases, the terms of the prior year would apply in the subsequent year.

12. I understand that all of the located indemnity agreements contain an agreement to arbitrate. Based on my many years of experience with loss-sensitive insurance programs, I am not aware of any instance where an agreement to arbitrate would apply to indemnity agreements for

every year except for one year in a program. In cases where an indemnity agreement that is part of a multi-year program cannot be located or was not memorialized with a new indemnity agreement, National Union refers to the terms of the prior policy year, which I understand from my years of experience is common practice.

13. In sum, the 1989-1990 policy period was a continuation of the Moorco loss sensitive insurance program subject to an indemnity agreement component like in every prior year, which includes an agreement to arbitrate consistent with the indemnity agreements for every other policy year in the Moorco Program.

I declare under penalty of perjury that the foregoing is true and correct.



Executed on: November 30, 2023

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Aaron DeHaven